

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 _____
4 WAYNE BERRY,)
)
5 Plaintiff,) CIVIL NO. 01-00446SPK-LEK
)
6 vs.)
)
7 FLEMING COMPANIES, INC.,)
 aka FLEMING FOODS, INC.,)
8 aka FLEMING, DOE)
 INDIVIDUALS 1-50 and)
9 DOE PARTNERSHIPS,)
 CORPORATIONS and OTHER)
10 ENTITIES 1-20,)
)
11 Defendants.)

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13 TRANSCRIPT OF PROCEEDINGS

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15 The above-entitled matter came on for Jury
16 Trial commencing at 9:05 a.m. on Tuesday, February 25,
17 2003, Honolulu, Hawaii,

18
19 BEFORE: HONORABLE SAMUEL P. KING
20 United States District Judge
21 District of Hawaii

22
23
24 REPORTED BY: LISA J. GROULX, COURT REPORTER
25 Notary Public, State of Hawaii

EXHIBIT C

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A P P E A R A N C E S

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6 FOR PLAINTIFF: TIMOTHY J. HOGAN, ESQ.

7 WESLEY W. ICHIDA, ESQ.

8 LYNCH ICHIDA THOMPSON KIM & HIROTA

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14 FOR DEFENDANTS: LEX R. SMITH, ESQ.

15 ANN TERANISHI, ESQ.

16 Kobayashi, Sugita & Goda

17 First Hawaiian Center

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24 ALSO PRESENT: Ralph Stussi

25

LISA GROULX & ASSOCIATES
(808) 225-5701

1 A. No.

2 Q. Who drafted it?

3 A. I did.

4 Q. And did you use something as sort of a form
5 for it?

6 A. I had a variety of shrink wrap software
7 licenses I used as guide.

8 Q. Now had you ever written a license before?

9 A. Not for about 10 years, no.

10 Q. Okay. Now what was your intention in regard
11 to this license EULA? What were you trying to do in
12 this document, you, personally?

13 A. Basically, set some ground rules as to what
14 they could and could not do with my software, identify
15 it as my intellectual property, and act as an
16 operating agreement between Fleming and myself.

17 Q. Now when you say things that they could and
18 could not do, can you assist us in going through it.
19 First, it does identify, I believe, what software you
20 were licensing to Fleming.

21 A. Yes.

22 Q. And is that software that you've got
23 identified here the software that is here, sir?

24 A. Yes.

25 Q. And is there any other places in this